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E-filed: 2/20/08

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR U.K. LTD., and
HYNIX SEMICONDUCTOR
DEUTSCHLAND GmbH,

Plaintiffs,

v.

RAMBUS INC.,

Defendant.

No. CV-00-20905 RMW

ORDER REGARDING TESTIMONY OF
BRIAN SHIRLEY

[Re Docket No. 3248]

RAMBUS INC.,

Plaintiff,

v.

HYNIX SEMICONDUCTOR INC., HYNIX
SEMICONDUCTOR AMERICA INC.,
HYNIX SEMICONDUCTOR
MANUFACTURING AMERICA INC.,

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR, INC.,
SAMSUNG AUSTIN SEMICONDUCTOR,
L.P.,

NANYA TECHNOLOGY CORPORATION,
NANYA TECHNOLOGY CORPORATION
U.S.A.,

Defendants.

No. C-05-00334 RMW

[Re Docket No 1287]

RAMBUS INC.,

Plaintiff,

v.

MICRON TECHNOLOGY, INC., and
MICRON SEMICONDUCTOR PRODUCTS,
INC.

Defendants.

No. C-06-00244 RMW

[Re Docket No. 896]

Rambus seeks to preclude Brian Shirley, a Micron representative, from testifying on two subjects: (1) "industry lock-in"; and (2) a quantification of the alleged switching costs Micron would incur were it to design around Rambus's alleged "feature set." Micron does not intend to have Mr. Shirley testify as to "industry lock-in" or to switching costs as of today. Therefore, the only outstanding dispute is whether Mr. Shirley can testify to his numerical estimate of Micron's switching costs in 2000. The court has read the parties' briefs and heard their oral argument, and for the following reasons, partially grants Rambus's motion.

Micron designated Mr. Shirley its 30(b)(6) witness regarding its contention that it was

1 locked-in to DDR, DDR2, DDR3 and DDR4 standards or any standards subsequent thereto. In his
2 30(b)(6) deposition, Mr. Shirley's testimony was very general: "I don't remember the exact dollar
3 figure. I remember that it was in the multiple hundreds of millions of dollars at minimum and from
4 our analysis was prohibitive enough that we came to the conclusion that we were locked into this
5 feature set." Hamilton Decl., Ex. G at 134:14-19. The dollar figure estimate that was based upon
6 the collective input of a group of Micron employees provided at a single meeting "sometime in the
7 early 2000s" that probably occurred in Idaho. Hamilton Decl., Ex. F at 131:3-11.

8 Micron advances two evidentiary bases for Mr. Shirley's quantification of Micron's estimated
9 switching costs. First, Micron argues that Mr. Shirley's estimate is permissible as a lay opinion.
10 The court disagrees. There is an inadequate foundation for the "hundreds of millions" figure, even
11 as a lay opinion. While serving as Micron's representative, Mr. Shirley could not testify to any
12 analytical details and conceded that the "analysis" was the result of a group discussion. The
13 situation here is unlike that in cases where the court has allowed lay opinions based upon a witness'
14 own experience and percipient knowledge of their business. *See, e.g., United States v. Muñoz-*
15 *Franco*, 487 F.3d 25 (1st Cir. 2007) (lay opinion testimony allowed under FRE 701 where based on
16 knowledge of a bank's banking practices that the witness acquired during his employment at the
17 bank). Here, Mr. Shirley's estimate is not based upon his own knowledge and experience with
18 Micron's business, but rather on the collective effort of a single group discussion at an
19 undocumented meeting. This cannot satisfy Rule 701(a)'s requirement that a lay opinion be
20 "rationally based on the perception of the witness."¹

21 Even if Mr. Shirley's dollar estimate lacks any foundation or reasonable basis such that it
22 cannot be considered for its truth, he could recount the figure to explain Micron's state of mind in
23 the early 2000s when it allegedly chose not to try to switch away from using Rambus's technologies.
24 While this use of his proffered testimony has some probative value, its relative probative value is

26 ¹ On the other hand, Mr. Shirley's deposition testimony demonstrates that he has the
27 personal knowledge and familiarity with Micron's business to discuss what factors affect the cost of
28 switching technologies, *see* Hamilton Decl., Ex. F at 131:23-133:7, and testimony regarding such cost
categories involved in switching designs appears to be properly within his percipient knowledge.

1 minimal in light of Mr. Shirley's more grounded testimony regarding the types of costs involved in
2 switching technologies. In this context, the baseless "hundreds of millions of dollars" figure
3 becomes substantially more prejudicial than probative because of its potential for misleading the
4 jury. Accordingly, this use of the dollar figure evidence is improper under Rule 403.

5 The court will therefore allow Mr. Shirley to testify about the different types of work and
6 expenses that go into changing features in a memory product along the lines of his deposition
7 testimony, *see* Hamilton Decl., Ex. F at 131:23-133:7. He can also testify that the group who
8 discussed the matter concluded that these costs involved with switching away from using Rambus's
9 technologies would have been prohibitive. This testimony can be offered to show Micron's state of
10 mind and why it did not undertake a switch. However, he cannot give an estimate of the dollar
11 amount of switching costs as there is no adequate foundation for Mr. Shirley's lay opinion of the
12 figure and any reference to the figure in explaining Micron's state of mind is substantially more
13 prejudicial than probative.

14
15 DATED: 2/20/08



RONALD M. WHYTE
United States District Judge

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Dated: 2/20/08

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